

REPORT NUMBER 103 OF THE ACADEMIC APPEALS BOARD

October 1st, 1986

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held hearings on Monday, March 3rd, 1986 at 1:30 p.m. in the Board Room, Simcoe Hall; Friday, March 7th, 1986 at 1:30 p.m. in the Board Room, Simcoe Hall; Tuesday, April 1st, 1986 at 6:00 p.m. in the Board Room, Simcoe Hall; Friday, April 18th, 1986 at 9:00 a.m. in the Board Room, Simcoe Hall; Monday, May 5th, 1986 at 7 p.m. in the Board Room, Simcoe Hall; Monday, September 15th, 1986 at 6:00 p.m. in the Board Room, Simcoe Hall; Thursday, September 18th, 1986 at 1:00 p.m. in the Conference Room, Faculty of Pharmacy; Tuesday, September 23rd, 1986 at 6:00 p.m. in the Board Room, Simcoe Hall and October 1st, 1986 at 6:00 p.m. in the Board Room, Simcoe Hall at which the following were present:

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| Professor S. M. Waddams (In the Chair) | Professor J. Galloway |
| Ms. F. Currey | Mrs. D. Hellebust |
| Professor F. Flahiff | |
| Professor P. Fox | Ms. Irene Birrell, Secretary |

In Attendance:

Mr. P.
Mr. Ian Blue, Cassels, Brock and Blackwell
Dr. P. J. White, Secretary of the School of Graduate Studies
* Professor E. Kremer
* Professor D. McCormack Smythe
* Professor D. Savan
* Professor J. G. Slater
* Professor C. W. Webb

* Present only at those hearings where they gave evidence.

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

This appeal has a long history. In 1970, Mr. P. submitted a thesis for the degree of Doctor of Philosophy in the Department of Philosophy. The thesis was submitted against the advice of his supervisor and an oral examination was scheduled at Mr. P.'s instance (as provided by the rules of the School of Graduate Studies) against the advice of the Chairman of the Department of Philosophy. At the oral examination the thesis and its defence were adjudged unsatisfactory in the form in which they had been presented, and, as the rules of the School of Graduate Studies require in such a case, the meeting of the Committee was adjourned in order to allow Mr. P. an opportunity to make revisions. Following the examination a letter was written dated December 15th, 1970, signed by Professor Webb, Mr. P.'s supervisor, setting out the changes that the Committee considered should be made.

Mr. P. appealed against the decision to adjourn, first to the Executive Committee of Division I of the School of Graduate Studies, then to the Applications and Memorials Committee of the School, and then to the Academic Appeals Board (at that time known as the Subcommittee on Academic Appeals), chaired on that occasion by Professor Dunlop. The Subcommittee, by a decision dated February 18th, 1974, dismissed the appeal, but allowed a further period of two years from that date for revisions to be made. This decision was upheld by the Divisional Court of the High Court of Justice on April 14th, 1975 (Re P. and Governing Council of the University of Toronto 8 O.R. (2d) 749).

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The thesis had meanwhile been published, in somewhat altered form, and Mr. P. submitted copies of the printed book to the reconvened Examination Committee which met in January 1976. The revised form of the thesis did not incorporate the changes suggested by the Committee in 1970. The Committee, unanimously, judged the thesis and its defence inadequate, with the consequence that, under the rules of the School of Graduate Studies, Mr. P.'s candidacy for the degree terminated.

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Mr. P. appealed from this decision to the Applications and Memorials Committee of the School, which met in April, May and June of 1982 and published an interim decision in July of that year. By this interim decision, the Applications and Memorials Committee ordered that, after an opportunity had been given to Mr. P. to make further changes, the thesis should be submitted to three assessors outside the University of Toronto to be chosen by the School after consultation with Professors Slater and Webb and Mr. P. This procedure was followed, and three anonymous opinions were obtained, of which one was favourable and two were unfavourable. The Applications and Memorials Committee then met again in January 1984 and dismissed Mr. P.'s appeal.

In July 1984, Mr. P. appealed to this Board, chaired on that occasion by Professor Sharpe of the Faculty of Law. The Board met on April 15th, 1985 and made rulings on two preliminary points for which written reasons were given dated May 1st, 1985. Before the hearing could be concluded, however, one of the members of the Board ceased to be eligible for membership, and the hearing commenced again before an entirely new Board (the present Board) consisting of Professors Fox, Flahiff and Galloway, Mrs. Hellebust and Ms. Currey and chaired by Professor Waddams.

We commenced to hear the appeal on March 3rd, 1986 and met again on March 7th, April 1st, April 18th, May 5th, September 15th, September 18th, September 23rd and October 1st. The time spent was about 32 hours.

At the outset we were invited by Mr. P. to read his thesis with a view to making a judgment of its academic merits. This was a matter on which the Board chaired by Professor Sharpe had made a preliminary ruling in 1985. That Board had held that it would not be assisted in its duty by attempting to judge the thesis. The Board relied on the decision of the Divisional Court in Re P where Weatherston, J. had said:

The Subcommittee on Academic Appeals [now the Academic Appeals Board]...rightly limited itself to the question whether his work was fairly assessed by competent examiners.

Earlier the same judge had said:

The appeal cannot be a new examination. It can only be an enquiry as to whether the examination was properly conducted by competent examiners. This can only be the case because members of the appellate bodies are not always competent to conduct fresh examinations.

This is, in our judgment, the position in which we find ourselves. None of us is a philosopher. We could not - certainly not in the course of a hearing of this sort - be sufficiently instructed in philosophy to judge the merits of the thesis, and, even if we could, such a judgment would not be the judgment of a duly constituted examination committee by which alone, under the rules of this and of almost all other universities, the quality of doctoral theses must be assessed. We ruled, therefore, that we would not read the thesis with a view to assessing its merits; we said, however, that we would be willing to look at any parts of the thesis to which Mr. P. might refer us in support of relevant arguments, and we did in fact look briefly at the version of the thesis presented in 1970 with subsequent annotations, at Mr. P.'s invitation, in order to consider the extent of the additions made to the thesis before its publication in book form.

The second preliminary point before us, on which Professor Sharpe had also ruled, had to do with whether we should examine the procedures employed by the Applications and Memorials Committee. Mr. P. objected to these procedures, in particular to the anonymity of the three assessors employed by the School in pursuance of the Committee's order. The duties of the Applications and Memorials Committee were the same as our own, that is, not to examine the merits of the thesis, but to judge whether Mr. P. had been properly assessed by competent examiners. This issue is the issue that we also must decide, and must be dealt with by us whether the Applications and Memorials Committee was right or wrong in devising and employing the procedure it used. Even if we were convinced that the Applications and Memorials Committee was wrong in this matter, we would still have to determine, ourselves, whether the 1976 examination was

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properly conducted. Weatherston, J. touched on this point also in Re P. when he suggested that "the final appeal is in effect a new trial". Accordingly, we ruled that the issue before us was the propriety of the 1976 examination, and not the propriety of the procedures used by the Applications and Memorials Committee.

Subsequently we were required to elaborate on the meaning of the phrase "fairly [or properly] assessed by competent examiners". Mr. P. urged upon us the view that the word "fairly" required us to make our own judgment on the actual merit of the thesis, and that "competent" required us to hear evidence and make our own judgment on the merits, as philosophers, of each member of the Examination Committee. We ruled that the phrase "fairly assessed" requires us to consider not the actual merits of the thesis, but whether fair procedures were used so as to enable the examiners to direct their minds to the relevant questions. As used in its context by Weatherston, J., making the point that an appeal board, not consisting of experts, could not make its own judgment of the merits of the thesis, the phrase, in our opinion, must be read in this sense. For similar reasons, we do not think that we can make an independent judgment of the competence of the examiners in the sense of their ability as philosophers. This might require reading their work and comparing these with the works of other philosophers, a task for which it is hardly necessary to say we do not consider ourselves equipped. We ruled that "competent" as used by Weatherston, J. means duly qualified under university rules and practice.

We heard evidence from Mr. P's supervisor, Professor Webb, and from two other members of the Examination Committee, Professors Slater and Kremer. We also heard the evidence of Professor Savan of the Department of Philosophy, Professor McCormack Smythe of York University, and of Mr. P. himself. Professor Parker, Chairman of both Examination Committees, who is ill, replied by letter to questions addressed to him by the Board.

Mr. P. asserted that the adverse decision was due to a bias against him in the Department of Philosophy. We found no evidence establishing an improper personal bias. Though there did develop in the course of this very protracted dispute some ill-feeling on both sides which is clearly undesirable in an academic relationship, we cannot find that this was due to personal bias on the part of the Department of Philosophy or its individual members. Professors Webb, Slater and Kremer all said that they thought that the thesis was redeemable or salvageable, and we have no reason to doubt that they exercised an honest judgment, and that they would not have hesitated to approve the thesis if they had judged it acceptable. The letter of December 15th said that with the changes suggested "an interesting and acceptable thesis could be produced". The evidence before us supported this view of the Committee's attitude.

A different sort of bias that Mr. P. has also alleged is ideological. He has suggested that his thesis belongs to a school of philosophy (traditional) to which the members of the Examination Committee were hostile, being members of another school (analytical). Divisions of opinion in university departments can sometimes give rise to difficulties, but, in our opinion, the evidence in this case fell short of establishing that such a difference in schools of thought was the reason for the rejection of the thesis. First, Professors Webb, Savan and Kremer all stated in their evidence that there was no hard and fast division between the two schools of thought in the Department. They said that there are elements of each school of thought to be found in most members of the Department, and several members of the Examination Committee were said to be not unsympathetic to traditional philosophy. Secondly, as has been said, all the examiners who gave evidence thought that the thesis was redeemable. We do not doubt that, as they told us, they would have approved it if the changes suggested in the letter of December 15th, 1970 had been made. The evidence also made it clear that the thesis was not rejected because it belonged to an unacceptable school of philosophy, but because it did not deal well, on its own terms, with the subject matter. It was the weakness of analysis and the defects of organization that (in the judgment of those who gave evidence) were the principal defects. Professor Webb said: "If you take on Feigl [a philosopher, as we understood it, considered to belong to the analytical school whose views were criticized in the thesis] you have to do a better job". There is no

profit by future students of the subject. In our opinion, the evidence established that the examiners were attempting, in their best judgment, to apply criteria of this sort to the thesis. The letter of December 15th, 1970 included this passage:

First of all, it is absolutely essential for you to realize that your thesis was not rejected because you hold a form of psycho-physical dualism to be true, or because you hold a particular philosophical outlook which may be called "rationalism", or because you deny doctrines of those who may be called "empiricists".

Your thesis was rejected because it does not do what it purports to do, namely, to present a Critique of the Psycho-physical Identity Theory.

There was no evidence before us to suggest that this was not an accurate portrayal of the Committee's attitude.

Mr. P. objected to this letter (the one dated December 15th, 1970) containing the changes suggested by the Committee on the grounds that the Department ought not to have imposed any "requirements" upon him, in view of the commitment of the Department and of the University to free and original enquiry, and specifically of the School of Graduate Studies to "original investigation conducted by the candidate". However, in our opinion, the Committee acted quite properly in indicating to Mr. P. what precisely were the deficiencies that it perceived. The rules of the School of Graduate Studies require a written statement that indicates the "reasons for adjournment and the Committee's requirements for the reconvened oral examination". For the Committee not to give such an indication would put the candidate in a worse position, that is, that of not knowing what alterations might make the thesis acceptable. The fact that the word "requirements" is used in the letter, in conjunction with the word "suggested", and the word "suggestions" in the first sentence of the letter, does not in our view, indicate any impropriety. The rules of the School use the same word (requirements). The word, in its context, means such alterations as would, in the judgment of the Committee, ameliorate the perceived deficiencies. Though some changes were made in the printed version, it was not alleged that these were the changes suggested in the letter of December 15th, 1970.

Before the Applications and Memorials Committee, and again before us, Mr. P. drew attention to the fact that his book had been accepted for publication and to some favourable reviews of it. In our opinion such reviews cannot be conclusive. A doctoral examination committee judges for a different purpose than does a publisher or a reviewer, and it is not inconceivable that it may adjudge a thesis insufficient for the degree of Doctor of Philosophy even though the same work might be praised as a book by reputable publishers and scholars. Such a discrepancy of opinion is not, in our judgment, sufficient in itself to cast doubt on the propriety of the examination.

Some objections were made to the constitution of the Examination Committee. By the rules of the School of Graduate Studies:

At the reconvened examination, no new Committee members shall be added, except for necessary replacements.

Mr. P. argued that, the Committee having formerly decided against him and therefore being biased, replacement of all its members including the Chairman was "necessary". We cannot accept this interpretation of the rules, which would contradict the notion of "adjournment" by requiring a wholly new committee in every case, and which might be impracticable in small departments. Professor Wood had left the University and was replaced by Professor Thornton. No evidence was presented to us to suggest that

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Professor Thornton's was an improper appointment. Professor Webb was absent from the examination, having been taken ill the previous day. The supervisor's absence from a doctoral examination is unusual, but in some cases, such as permanent disability or absence from the University it must be inevitable. In the case of temporary illness (as here) postponement of the examination would be a possibility, but we cannot conclude that this is always a necessary course so long as a quorum is present, as it was in this case. The chair may legitimately consider other factors, such as inconvenience to an external examiner who may have travelled from a distant place. We did not hear evidence that established that the decision to proceed in Professor Webb's absence was wrong. In any case, we do not think that it prejudiced Mr. P. Professor Webb did say that the thesis was "no worse than some that had passed", and that he now thinks that it was a borderline thesis that "could have been nudged into the passing range", but, he also said that he still thinks that the document needed revision; the overall effect of his evidence before us was that he did not consider, either in 1970 or 1976, that the thesis ought to have been approved. He recommended against the submission of the thesis in the first place; he voted against it in 1970; he signed the letter of December 15th, 1970 enumerating the suggested changes; those changes (as is undisputed) were not made. By the rules of the School of Graduate Studies two negative votes and/or abstentions are sufficient to fail the thesis. The decision in 1976, as in 1970, was unanimous. It is not conceivable to us that, had Professor Webb been present, the result of the 1976 examination would have been different.

Mr. P. objected also to the role of the University's solicitors in the proceedings. His objection was that it was improper for the same firm to advise the Examination Committee and to represent the Department of Philosophy before the Applications and Memorials Committee, the School of Graduate Studies before the Academic Appeals Board, and the Board (or the University) before the Divisional Court. We recognize that the structure of the University and its departments and committees involves a relationship between appeal committees that is not precisely analogous to the structure of the courts. However, we think that this is inevitable in the university environment, and we have heard no evidence that persuades us that the role of the University's solicitors caused Mr. P. to be deprived at any stage of a fair hearing.

Some other matters that arose during the hearing should be mentioned. After 15 hours of hearings, only one witness (Professor Webb) having been examined, and Mr. P. having indicated that he wished to call at least a further 23 witnesses, the Board indicated orally and by letter that at its next hearing it would consider the question of imposing a time limit on the parties. At the next session, on May 5th, 1986, the parties were asked to estimate how long they would require to complete their cases. Mr. P. estimated that he would require from 5 to 10 hours. Mr. Blue estimated that for his case he would require 1 hour. The Board, after deliberation, announced a limit of 10 hours for the completion of Mr. P.'s case. In fact the hearings continued for another 17 hours, partly because of a delay on the part of the School of Graduate Studies in producing documents, a matter that will be referred to again below, which, in our opinion, justified an extension of time to Mr. P. At the beginning of the last session (October 1st) we invited Mr. P. to make submissions on the question of extending the time limit. We considered these submissions, and we were satisfied that Mr. P. had had a full and fair opportunity to present his case. He did not submit that we were bound to hear a case indefinitely, and no tribunal constituted as this one is could function on such a basis. We allowed Mr. P. a further one-half hour to sum up his argument.

Mr. P. asked us to issue summonses to a list of 23 witnesses, asserting that the chairman was bound to sign the summonses without enquiry. The Statutory Powers Procedure Act says that a Tribunal "may" require any person by summons to give evidence. Having heard submissions from both sides on this point, we concluded that, in the phrase used by the Divisional Court in Re Reid and Wigg (1980) 29 O.R. (2d) 633, we were only bound to issue summonses if a "nexus" was indicated "between the evidence of the prospective witness and the purpose of the enquiry". Mr. P. did not, in our opinion, establish a sufficient nexus in respect of any witness to justify the issue of a summons except Professor Parker, the Chairman of the Examination Committee, who was ill in consequence of a severe heart

attack. Mr. P. did not ask us to issue a summons in this case, and, with Mr. P's concurrence, we wrote to Professor Parker addressing to him the questions that Mr. P. had indicated that he wished to ask, and we received a prompt reply.

Another matter that we must refer to briefly is the production of documents. Mr. P. asked to see all the documents relating to his case, and was told that all "relevant" documents had been produced. He argued before us that the question of what documents should be accessible should not depend solely on the School's judgment of relevance. We agreed with this argument, and on May 5th ordered the School to produce a list of all documents in its possession relating to Mr. P. to which he had not already had access, with a brief description of each. We intended that this would give to Mr. P. a means of challenging the judgment of the School, without requiring the School actually to produce documents that might be irrelevant or privileged. It appears that our order was misunderstood by the School, because when we met on September 15th a letter was put before us, from Cassels, Brock & Blackwell to Mr. P. dated September 12th, as follows:

In accordance with the Academic Appeal Board's order, my associate, Beverly Harris, has been through the files of the School of Graduate Studies and Department of Philosophy. She has searched for documents before the 1970 and the 1976 examination committee or documents that might reasonably be expected to have influenced their decision.

Enclosed with this letter you will find two things:

1. A list of the documents in those files together with an indication of where each document can be found in the productions before the Board; and
2. A volume of documents from that list which have not already been produced before the Academic Appeal Board.

In the list of documents to be found in the files, I have not included correspondence between you and members of the University relating to these examination committees, since, obviously, you have these already, nor have I included privileged correspondence.

It is regrettable that our order of May 5th should have been so understood. The School asserted before us on September 15th that it had in fact complied with our order. Consequently we felt it necessary to add on September 15th an order that a certificate should be produced by or on behalf of the School that every document relating to Mr. P. had been individually examined and that the list submitted was complete. Subsequently, we were informed that the parties had reached an agreement on this matter. The time spent in dealing with this issue, and further time (as well as time on account of delay in copying documents) to allow Mr. P. to deal in argument with the documents was added to Mr. P's time allowance. We were satisfied that the time eventually allowed was sufficient to enable Mr. P. to deal fully and fairly with the documents, and with matters that arose out of them.

In the result, we are not persuaded that there was any impropriety in the 1976 examination, and, accordingly, Mr. P's appeal is dismissed.

Secretary
October 22nd, 1986

Acting Chairman